Sports Toto Malaysia Sdn Bhd v Ketua Pengarah Kastam & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24–59–10 OF 2019
MARIANA YAHYA J
7 AUGUST 2021

Statutory Interpretation — Taxing statute — Strict interpretation — Formula prescribed under para 8(1) of the Third Schedule of the Goods and Services Tax Act 2014 — Whether the provision must be read conjunctively — Whether accrued amount of jackpot prize should be included in variable B in determining value of betting and gaming supplies for GST purposes — Whether computation of GST could be made on cumulative supply

This was the appellant's originating summons vide encl 1 seeking declarations, inter alia, that: (a) the decision made by the second respondent pursuant to an appeal filed by the appellant under s 126 of the Goods and Services Tax Act 2014 ('the GST Act') be set aside; (b) the decision made by the first respondent in relation to the determination of the value of betting and gaming supplies provided by the appellant ('first respondent's decision') be set aside; and (c) a declaration that the appellant was entitled to include the costs from the accrued 'jackpot prize' as part of variable B on a draw-by-draw basis in determining the value of betting and gaming supplies using the formula provided in para 8(1) of the Third Schedule of the GST Act. The appellant was in the business of operating Toto pool betting or jackpot game. The operation of the appellant's business in jackpot game was regulated and governed by, among others, a pool betting scheme ('approved scheme') which had been approved by the minister of finance. The approved scheme governed entirety of the jackpot game operated by the appellant including how the prize money were to be paid out or allotted for 'rolling over'. Once the prize allocations to jackpot games were completed, the allotted amounts would be paid out to the successful winners in the draw. If no winner was identified, the prize money would 'roll over' to the next draw. The 'roll over' would continue until such time when a winner was identified in a draw. Given the allotted prize money was a committed prize amount regardless whether a winner had been identified at each draw, the appellant included the amount of prize money allotted for 'jackpot prize' in variable B on a draw-to-draw basis when calculating its betting and gaming supplies based on the Goods and Services Tax formula ('GST formula'). The appellant had submitted a request to the first respondent for confirmation on the GST treatment in relation to its betting and gaming supplies. The first respondent requested the appellant to amend its GST returns for the taxable period, among others, to remove the accrued 'jackpot prize' from variable B in

the GST formula. The first respondent also informed the appellant that it would commence an action against the appellant to recover any additional GST payable as a result of the amendment. The amendment requested to be made by the first respondent resulted in the appellant needing to pay additional GST amounting to RM15,565,024.55. The appellant, on a without prejudice basis, paid the additional GST arising from the amendment. Dissatisfied with the findings of the first respondent, the appellant filed a review application under s 124 of the GST Act. The first respondent rejected the appellant's review application and maintained its decision. The appellant then filed an appeal against the first respondent's decision at the tribunal (the second respondent). The tribunal, however, dismissed the appellant's appeal and affirmed the first respondent's decision. Aggrieved with the second respondent's decision, the appellant filed the present appeal. The issue that arose for determination was whether the accrued amount of jackpot prize was to be included in variable B of the formula prescribed under para 8(1) of the Third Schedule of the GST Act 2014 in determining the value of betting and gaming supplies for GST purposes.

Held, dismissing the application with costs:

(1) The ordinary meaning of the formula in para 8(1) of the Third Schedule of the GST Act requires the appellant to use the total amount that had actually been collected by the appellant (variable A) minus the total amount of pay-out that had actually been paid to the winners which was considered as GST input tax (variable B). As a result, the formula provides GST shall only be collected on the net amount. If the net amount was zero, no tax shall be incurred. That was the ordinary meaning of it, no doubt, no confusion and no absurdity. The court was of the view that the second respondent had not erred in its finding when it stated that the phrase 'amount of money, if any, payable to any person participating successfully' meant prize money due to any jackpot winner of the draw. The GST Act explicitly provided for the computation of GST amount on each and every supply made by the appellant. It did not permit the computation of the GST on the cumulative supply. Therefore, the appellant had to adhere to such provision as stated (see paras 37–39).

(2) This court disagreed with the appellant's contention that in variable B, the word 'any person participating successfully' meant anyone who took part in a successful way or manner and that it was not restricted to any specific winner at the time of a particular draw, neither had it required winner to be identified. The court was of the view that 'anyone who takes part in a successful way' only referred to persons participating in the game and may not be necessarily a winner at the time of a particular draw. Variable B of para 8(1) specifically referred to the amount of money, if any, payable to any person participating successfully in the jackpot game. It referred not only to the successful participants in the jackpot game (the

winner) in the said particular draw but also the amount of money that was to be paid to the successful winner. Therefore, there was no reason to depart from the finding of the second respondent that 'any person participating successfully' ordinarily meant any person who was declared as the winner of the jackpot (see para 41).

(3) The approach taken by the appellant in breaking the wording of variable B into parts and pieces had resulted an attempt to ascertain the will of GST Act and would lead to absurdity. There was no evidence before the respondents to show that the betting and gaming industry was a selected economy to be stimulated by the government for this industry to receive a more favourable GST treatment such that a number forecast operator is allowed to collect GST output tax by selling lottery tickets for an accrued jackpot, and at the same time was still entitled to enjoy rebate under the GST input tax even though there was no actual pay-out yet (see paras 42–43).

(4) Looking fairly at the language used and the findings made by the second respondent, if the accrued jackpot was struck by a winner and the said jackpot prize had actually been given out to the winner, then that was when the GST input tax incurred and only then could it be included as variable B for the determination of the value of betting and game supplies under para 8(1) of the Third Schedule of the GST Act. The wording provided in variable B in para 8(1) of the Third Schedule of the GST Act must be read conjunctively. Therefore, the ordinary meaning of the GST Act must mean the jackpot prize that had actually been paid to the winner for it to be included as variable B for the calculation of value of betting and gaming supplies for GST purposes. This was the reason why the formula was formulated in such a way for GST which was a broad-based consumption tax based on a value- added concept and based on final consumption of goods and services. Hence, the appellant had misconstrued the ordinary meaning of para 8(1) of the Third Schedule of the GST Act when the appellant submitted that even where there was no winner identified, for the accrued jackpot prize represented a definite and unavoidable cost to the appellant from the moment the draw closes, the appellant could include it as variable B. In the absence of any other interpretation of variable B except what is stated in para 8(1) of the Third Schedule GST Act, it was unbecoming for the appellant to suggest something that was beyond the scope of the GST Act (see paras 44–45).

(5) There was no evidence before this court to show that there had been any manifest error in law and/or in fact in the second respondent's decision in relation to the interpretation and application of para 8(1) of the Third Schedule of the GST Act in determining the value of betting and gaming supplies for goods and services tax purposes. Therefore, there was no

A appealable error in the second respondent's decision that warranted an intervention by the court (see paras 48–49).

[Bahasa Malaysia summary

B Ini adalah saman pemula perayu yang melalui lampiran 1 yang memohon deklarasi, antara lain, bahawa: (a) keputusan yang dibuat oleh responden kedua berdasarkan rayuan yang difailkan oleh perayu di bawah s 126 Akta Cukai Barang dan Perkhidmatan 2014 ('Akta GST') diketepikan; (b) keputusan yang dibuat oleh responden pertama berkaitan dengan penentuan nilai pembekalan pertaruhan dan perjudian yang disediakan oleh perayu ('keputusan responden C pertama') diketepikan; dan (c) satu deklarasi bahawa perayu berhak memasukkan kos dari 'jackpot price' yang terakru sebagai sebahagian dari pemboleh ubah B berdasarkan asas cabutan demi cabutan dalam menentukan nilai pembekalan pertaruhan dan perjudian menggunakan formula yang disediakan dalam perenggan 8(1) Jadual Ketiga Akta GST. Perayu D menjalankan perniagaan pertaruhan pool Toto atau permainan jackpot. Operasi perniagaan perayu dalam permainan jackpot diselia dan diatur oleh, antara lain, skema pertaruhan pool ('skema yang diluluskan') yang telah diluluskan oleh menteri kewangan. Skim yang diluluskan tersebut mengatur keseluruhan permainan jackpot yang dikendalikan oleh perayu termasuk E bagaimana hadiah wang harus dibayar atau diperuntukkan untuk 'rolling over'. Setelah peruntukan hadiah untuk permainan jackpot selesai, jumlah yang diperuntukkan akan dibayar kepada pemenang yang berjaya melalui cabutan. Sekiranya tidak ada pemenang yang dikenal pasti, hadiah wang akan 'roll over' ke cabutan seterusnya. 'Roll over' akan berterusan sehingga apabila F pemenang dikenal pasti dalam cabutan. Memandangkan hadiah wang yang diperuntukkan adalah jumlah hadiah yang terikat tanpa mengira sama ada pemenang telah dikenal pasti pada setiap cabutan, perayu memasukkan jumlah hadiah wang yang diperuntukkan untuk 'jackpot price' dalam pemboleh ubah B secara cabutan demi cabutan semasa menilai pembekalan pertaruhan dan G perjudiannya berdasarkan formula Cukai Barang dan Perkhidmatan ('formula GST'). Perayu telah mengemukakan permintaan kepada responden pertama untuk pengesahan mengenai perlakuan GST yang berkaitan dengan pembekalan pertaruhan dan perjudiannya. Responden pertama meminta perayu untuk mengubah pulangan GST untuk tempoh pengenaan cukai, H antara lain, untuk membuang 'jackpot price' yang terakru dari pemboleh ubah B dalam formula GST. Responden pertama juga memaklumkan perayu bahawa pihaknya akan memulakan tindakan terhadap perayu untuk mendapatkan kembali GST tambahan yang perlu dibayar disebabkan oleh pindaan tersebut. Pindaan yang diminta dibuat oleh responden pertama I menyebabkan perayu perlu membayar GST tambahan berjumlah RM15,565,024.55. Perayu, tanpa prasangka, membayar GST tambahan yang timbul dari pindaan tersebut. Tidak berpuas hati dengan dapatan responden pertama, perayu memfailkan permohonan semakan di bawah s 124 Akta GST. Responden pertama menolak permohonan semakan perayu dan mengekalkan

keputusannya. Perayu kemudian memfailkan rayuan terhadap keputusan responden pertama di tribunal (responden kedua). Tribunal, walaubagaimanapun, menolak rayuan perayu dan mengekalkan keputusan responden pertama. Terkilan dengan keputusan responden kedua, perayu memfailkan rayuan semasa. Isu yang timbul untuk ditentukan adalah sama ada jumlah 'jackpot price' yang terakru harus dimasukkan dalam pemboleh ubah B formula yang ditetapkan di bawah perenggan 8(1) Jadual Ketiga Akta GST 2014 dalam menentukan nilai pembekalan pertaruhan dan perjudian untuk tujuan GST.

Diputuskan, menolak permohonan dengan kos:

(1) Makna biasa formula tersebut dalam perenggan 8(1) Jadual Ketiga Akta GST menetapkan bahawa perayu harus menggunakan jumlah keseluruhan yang sebenarnya telah dikumpulkan oleh perayu (pemboleh ubah A) ditolak jumlah keseluruhan pembayaran yang sebenarnya telah dibayar kepada pemenang yang dianggap sebagai cukai input GST (pemboleh ubah B). Hasilnya, formula tersebut memperuntukkan bahawa GST hanya akan dikutip dari jumlah bersih. Sekiranya jumlah bersih adalah sifar, cukai tidak akan dikenakan. Itulah adalah makna biasanya, tidak ada keraguan, tidak ada kekeliruan dan munasabah. Mahkamah berpendapat bahawa responden kedua tidak terkhilaf dalam dapatannya apabila menyatakan bahawa frasa 'amaun wang, jika ada, yang kena dibayar kepada mana-mana orang yang terlibat yang berjaya' bermaksud hadiah wang yang harus dibayar kepada mana-mana pemenang cabutan jackpot. Akta GST secara jelas memperuntukkan pengiraan jumlah GST pada setiap pembekalan yang dibuat oleh perayu. Ia tidak membenarkan pengiraan GST pada pembekalan kumulatif. Oleh itu, perayu harus mematuhi ketetapan seperti yang dinyatakan (lihat perenggan 37–39).

(2) Mahkamah ini tidak setuju dengan pendapat perayu bahawa dalam pemboleh ubah B, perkataan 'mana-mana orang yang terlibat yang berjaya' bermaksud sesiapa yang terlibat yang berjaya dengan cara atau tindakan dan bahawa ia tidak terhad kepada pemenang spesifik pada masa cabutan tertentu, tidak juga ia memerlukan pemenang untuk dikenal pasti. Mahkamah berpendapat bahawa 'sesiapa yang terlibat dengan cara yang berjaya' hanya merujuk kepada orang yang mengambil bahagian dalam perjudian dan tidak semestinya menjadi pemenang pada masa cabutan tertentu. Pemboleh ubah B dalam perenggan 8(1) secara khusus merujuk kepada amaun wang, jika ada, yang kena dibayar kepada mana-mana orang yang berjaya dalam perjudian jackpot. Ia bukan hanya merujuk kepada peserta yang berjaya dalam perjudian jackpot (pemenang) dalam cabutan tersebut, tetapi juga amaun wang yang kena dibayar kepada pemenang yang berjaya. Oleh itu, tidak ada alasan untuk menolak dapatan responden kedua bahawa 'mana-mana orang yang

terlibat yang berjaya' biasanya bermaksud mana-mana orang yang diisytiharkan sebagai pemenang jackpot (lihat perenggan 41).

(3) Pendekatan yang diambil oleh perayu untuk memisahkan perkataan pemboleh ubah B menjadi beberapa bahagian telah menyebabkan usaha untuk memastikan kehendak Akta GST dan akan menyebabkannya tidak munasabah. Tidak ada keterangan di hadapan responden untuk menunjukkan bahawa industri pertaruhan dan perjudain adalah ekonomi terpilih untuk dirangsang oleh kerajaan agar industri ini mendapat layanan GST yang lebih baik sehingga sebilangan pengendali ramalan dibenarkan memungut cukai output GST dengan menjual tiket loteri untuk jackpot terakru, dan pada masa yang sama masih berhak menikmati rebat di bawah cukai input GST walaupun belum ada pembayaran sebenarnya (lihat perenggan 42–43).

(4) Melihat dengan adil bahasa yang digunakan dan dapatan yang dibuat oleh responden kedua, sekiranya jackpot terakru dimenangi oleh pemenang dan hadiah jackpot tersebut sebenarnya telah diberikan kepada pemenang, maka pada ketika itulah cukai input GST dikenakan dan pada masa itulah ia dapat dimasukkan sebagai pemboleh ubah B untuk penentuan nilai pembekalan pertaruhan dan perjudian di bawah perenggan 8(1) Jadual Ketiga Akta GST. Perkataan yang ditetapkan dalam pemboleh ubah B di perenggan 8(1) Jadual Ketiga Akta GST haruslah dibaca secara berhubungan. Oleh itu, makna biasa Akta GST mesti memberi maksud hadiah jackpot sebenarnya telah dibayar kepada pemenang untuk ia dimasukkan sebagai pemboleh ubah B bagi pengiraan nilai pembekalan pertaruhan dan perjudian untuk tujuan GST. Ini adalah sebab mengapa formula tersebut dirumuskan sedemikian rupa untuk GST yang merupakan cukai penggunaan yang luas berdasarkan konsep nilai tambah dan berdasarkan penggunaan muktamad barang dan perkhidmatan. Oleh itu, perayu telah salah tafsir makna biasa perenggan 8(1) Jadual Ketiga Akta GST apabila perayu mengemukakan bahawa walaupun tidak ada pemenang yang dikenal pasti, bagi hadiah jackpot yang terakru mewakili kos yang pasti dan tidak dapat dielakkan kepada perayu dari masa cabutan ditutup, perayu harus memasukkannya sebagai pemboleh ubah B. Sekiranya tidak ada penafsiran lain mengenai pemboleh ubah B kecuali apa yang dinyatakan dalam perenggan 8(1) Jadual Ketiga Akta GST, adalah tidak wajar bagi perayu untuk mencadangkan sesuatu yang berada di luar skop Akta GST (lihat perenggan 44–45).

(5) Tidak ada keterangan di hadapan mahkamah ini yang menunjukkan bahawa terdapat kekhilafan nyata dalam undang-undang dan/atau fakta dalam keputusan responden kedua berkaitan dengan penafsiran dan penggunaan perenggan 8(1) Jadual Ketiga Akta GST dalam menentukan nilai pembekalan pertaruhan dan perjudian untuk tujuan cukai barang

dan perkhidmatan. Oleh itu, tidak ada kekhilafan yang dapat dirayu dalam keputusan responden kedua yang memerlukan campur tangan mahkamah (lihat perenggan 48–49).]

Cases referred to

Arulpragasan a/l Sandaraju v Public Prosecutor [1997] 1 MLJ 1, FC (refd)
Exxon Chemical (M) Sdn Bhd v Ketua Pengarah Dalam Negeri [2006] 1 MLJ 428; [2005] 4 CLJ 810, CA (refd)
Ketua Pengarah Hasil Dalam Negeri v Teraju Sinar Sdn Bhd [2014] 4 MLJ 218, CA (refd)
Mangin v Inland Revenue Commissioner [1971] AC 739, PC (refd)
Office Park Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2011] 9 MLJ 479, HC (refd)
Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal [2005] 3 MLJ 97, FC (refd)

Legislation referred to

Customs Act 1967 s 141W
Goods and Services Tax Act 2014 ss 2, 15, 15(1), 124, 126, Third Schedule, para 8(1)
National Language Acts 1963/1967 s 6(b)

S Saravana Kumar (Ng Kar Ngai with him) (Rosli Dahlan Saravana Partnership) for the appellant.
Ahmad Hanir bin Hambaly (Ng Wee Li with him) (Attorney General's Chambers) for the respondent.

Mariana Yahya J:

INTRODUCTION

[1] The appellant filed this originating summons (encl 1), seeking for the following orders:

(a) that the appellant be granted an extension of time, if an extension of time is necessary, to commence this appeal and seek the necessary reliefs against the abovenamed respondents;

(b) that the decision (Form G) made by the second respondent dated 24 June 2019 pursuant to an appeal filed by the appellant under s 126 of the Goods and Services Tax Act 2014 ('the GST Act') be set aside;

(c) that the decision made by the first respondent in the form of letter dated 9 June 2017 (re-dated 21 June 2017) in relation to the determination of the value of betting and gaming supplies provided by the appellant ('first respondent's decision') be set aside;

(d) that the first respondent shall refund the amount of taxes paid by the appellant pursuant to the first respondent's decision in the sum of RM15,565,024.55;

(e) a declaration that the appellant is entitled to include the costs from the accrued 'jackpot prize' as part of variable B on a draw-by-draw basis in determining the value of betting and gaming supplies using the formula provided in para 8(1) of the Third Schedule of the GST Act;

(f) all necessary and consequential directions and orders be given;

(g) costs in the cause; and

(h) any other and further relief that this court deems fit and proper.

SALIENT FACTS

[2] The appellant's affidavit in support of the application states the facts that the appellant is in the business of operating Toto pool betting or Jackpot game. It earns sales revenue from selling lottery tickets and pays out monetary prizes (including the Jackpot prize) to the winner of the lottery and incur other general and administrative costs in the process.

[3] The operation of the appellant's business in Jackpot game is regulated and governed by, among others, a pool betting scheme ('approved scheme') which has been approved by the Minister of Finance. The approved scheme governs entirety of the Jackpot game operated by the appellant including how the prize money are to be paid out or allotted for 'rolling over'.

[4] Once the prize allocations to Jackpot games are completed, the allotted amounts will be paid out to the successful winners in the draw. If no winner is identified, the prize money will 'roll over' to the next draw. The 'roll over' will continue until such time when a winner is identified in a draw. This 'rolling over' of the prize money is one of the key features of Jackpot games. Another key features is that the monetary prizes, if unclaimed by the identified winner within six months, will be remitted to the Minister. The appellant is not allowed to keep any won but unpaid prize or any allotted but yet un-won prize.

[5] Given the allotted prize money is a committed prize amount regardless whether a winner has been identified at each draw, the appellant included the amount of prize money allotted for 'jackpot prize' in variable B on a draw-to-draw basis when calculating its betting and gaming supplies based on the Goods and Services Tax Formula ('GST formula').

[6] On 15 December 2015, the appellant submitted a request to Customs for confirmation on the GST treatment in relation to its betting and gaming

supplies. In the request, the appellant also expressed its view that it is allowed to include the money allotted for 'jackpot prize' in variable B of the GST formula on a draw-to-draw basis.

[7] On 19 January 2017, Customs disagreed with the appellant's view and requested it to amend its GST returns for the taxable period between April 2015 to November 2016, among others, remove the accrued 'jackpot prize' from variable B in the GST formula. The Customs Department also informed the appellant that it would commence an action against the appellant to recover any additional GST payable as a result of the amendment.

[8] The amendment requested to be made by the Customs resulted in the appellant needing to pay additional GST amounting to RM15,565,024.55. However, on 24 January 2017 the appellant disputed the Customs' interpretation and emphasised that the monies allotted for the 'jackpot prize' should be included in variable B of the GST formula on a draw-to-draw basis as the sum is a committed liability or fixed expense of the appellant. The appellant had indicated that it would challenge the Customs' interpretation. Nevertheless on 27 January 2017, the appellant, on a without prejudice basis, paid the additional GST arising from the amendment.

[9] Dissatisfied with the findings of the Customs, the appellant on 17 February 2017 filed a review application under s 124 of the GST Act against the Customs' letter dated 19 January 2017.

[10] On 21 June 2017, the Customs rejected the appellant's review application and maintained its decision in the earlier letter dated 19 January 2017. Customs also informed the appellant that the accrued 'jackpot prize' could only be included in variable B of the GST formula when a winner has been identified.

[11] The appellant then on 7 July 2017 filed an appeal against the Customs' Decisions at the Tribunal (the second respondent). On 24 June 2019, the Tribunal dismissed the appellant's appeal and affirmed the first respondent's decisions dated 9 June 2017 (re-dated 21 June 2017).

[12] Aggrieved with the second respondent's decision, the appellant filed this appeal on the grounds as follows:

(a) the second respondent's decision in Form G dated 24 June 2019 ('second respondent's decision') was notified vide a letter dated 5 August 2019 to the appellant's tax agent, PricewaterhouseCoopers Taxation Services Sdn

Bhd ('PwC') who represented the appellant during the hearing. However, PwC only received the letter enclosing the Form G on 13 September 2019;

(b) based on a true construction of the wordiness employed in para 8(1), Third Schedule of the GST Act, the phrase 'payable to any person participating successfully' as stated in variable B of the formula for calculating betting and gaming supplies (GST formula) clearly is not restricted to prize money paid to winners of a particular draw only;

(c) the appellant is entitled to include the accrued 'jackpot prize' in variable B of the GST formula, as long as it has been allotted by the appellant. This is particularly when the sum is a committed liability and not removable by the appellant;

(d) it is not expressly stated in the GST Act (in both Malay and English version of the Act) that the money allotted for the 'Jackpot Prize' may only be included in variable B of the GST formula if a winner has been identified in a particular draw. In absence of clear wordings in the legislation, the second respondent is not entitled to impose such additional condition that there must be an identified winner in the GST formula;

(e) it is undisputed that, despite the fact that no winner was identified at the material time, the money allotted for the 'jackpot prize' in every draw is an unavoidable and a committed cost for the appellant;

(f) the second respondent has misconstrued the GST formula by failing to apply the GST formula correctly to the nature of the Jackpot game operated by the appellant;

(g) GST is a tax on 'value add'. The GST Act is intended to only tax on the margin or net profit gained by the taxpayer. Given this, it is plain and obvious that the appellant shall be entitled to deduct the amount of prize money allotted for the 'jackpot prize' in a draw-to-draw basis which is in essence the appellant's costs of operating the Jackpot game at the material time. Therefore, the appellant shall be allowed to include the accrued 'jackpot prize' in variable B of the GST formula. Accordingly, the second respondent has failed to uphold the spirit of the GST Act;

(h) the appellant's application for review (Form A) dated 17 February 2017 is not a pleading and the appellant is not bound by the matters stipulated in it; and

(i) the first respondent failed to provide sufficient reason to substantiate its decision and explain why its interpretation of the betting and gaming supplies shall be preferred over the appellant's interpretation. The first respondent also failed to provide sufficient basis to contend that the

accrued 'jackpot prize' may not be included in variable B of the GST formula until a winner is identified. A

[13] For ease reference of this appeal, this court reproduced the first respondent's decision dated 26 January 2017, the first respondent's review decision dated 21 June 2017 and the second respondent's decision dated 24 June 2019 as follows: B

(a) the first respondent's decision dated 26 January 2017 (exh LKC9, the appellant affidavit in support): C

SPORTS TOTO MALAYSIA SDN BHD GST REGISTRATION NO: 0011880366608

NOTIFICATION LETTER TO AMEND GST-03 STATEMENTS

Saya dengan hormatnya merujuk kepada surat tuan bertarikh 24 Januari 2017 berhubung perkara di atas. D

2. Dimaklumkan bahawa pengiraan ke atas nilai pembekalan pertaruhan dan perjudian adalah berdasarkan kepada peruntukan di bawah para 8(1), Jadual Ketiga, Akta Cukai Barang dan Perkhidmatan 2014, di mana nilai pembekalan hendaklah ditentukan mengikut formula berikut: E

$$\frac{100}{100 + C} \times (A - B)$$

Iaitu A ialah jumlah keseluruhan yang diterima bagi pembekalan itu dikurangkan apa-apa cukai atau duti di bawah apa-apa undang-undang bertulis lain kecuali duti eksais; F

B ialah amaun wang, jika ada, yang kena dibayar kepada mana-mana orang yang terlibat yang Berjaya dalam Pertaruhan, ambil Tagan, loteri, mesin perjudian atau permainan mengadu nasib; dan

C ialah kadar cukai yang ditetapkan di bawah Seksyen 10 G

4. Sehubungan dengan itu, kaedah pengiraan JKDM masih berkuatkuasa sehinggalah Kementerian Kewangan mengeluarkan surat kelulusan untuk membenarkan pihak tuan menggunakan kaedah pengiraan yang dicadangkan oleh industri operator nombor ramalan.

5. Sila ambil maklum bahawa keputusan ini boleh ditarik balik pada bila-bila masa sekiranya berlaku perubahan dasar ataupun wujud sebarang penyelewengan atau salah guna. H

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(FAUZIAH BINTI ABU ZARIM) I

Bahagian GST

b.p Ketua Pengarah Kastam Malaysia.

(b) the first respondent's review decision dated 21 June 2017 (exh LKC11,

the appellant affidavit in support):

SPORT TOTO MALAYSIA SDN BHD

LEVEL 13-01, BERJAYA TIMES SQUARE

NO 1 JALAN IMBI

55100 KUALA LUMPUR

Tuan,

KEPUTUSAN MUKTAMAD SEMAKAN SEMULA DI BAWAH SEKSYEN 124 AKTA CUKAI BARANG DAN PERKHIDMATAN

Adalah saya dengan hormatnya merujuk kepada permohonan tuan dan dokumen-dokumen sokongan yang disertakan, keputusannya adalah seperti berikut:

Para 8(1), Jadual Ketiga Akta CBP 2014 memperuntukkan nilai 'B' ialah amaun wang, jika ada, yang kena dibayar, kepada mana-mana orang yang terlibat yang berjaya dalam pertaruhan, ambil Tagan, loteri, mesin perjudian atau permainan mengadu nasib. Oleh yang demikian, amaun jackpot yang dibawa ke pusingan seterusnya tidak boleh diambil kira sebagai nilai 'B' untuk menentukan nilai pembekalan pertaruhan/perjudian syarikat. Amuan jackpot tersebut hendaklah diambil kira sebagai nilai 'B' hanya apabila amuan jackpot tersebut mempunyai pemenang. Sehubungan dengan itu, keputusan surat rujukan L1937863424 adalah dikekalkan.

TT

(JEFRIDIN CHE DAUD)

Bahagian GST

Cawangan Kawalan Kemudahan Fasilitasi Dan Konsultasi

bp Ketua Pengarah Kastam Malaysia.

(c) the second respondent's decision dated 24 June 2019 (exh LKC1, the appellant affidavit in support at p 40, Appeal No17/2018):

Appeal No. 17/2018 the Tribunal decides as follows:

In conclusion, without regard to formality and technicality as stipulated by Section 142(1) Goods and Services Tax Act 2014 [Act 762], this Tribunal holds that the appellant has failed on the balance of probabilities to prove its case against the Respondent. Consequently the appellant's appeal against the decision of the Director General of Customs (Respondent) dated 21 June 2017 is hereby dismissed. The decision of the Director General of Customs (Respondent) dated 21 June 2017 is hereby affirmed by virtue of *subsection 141T(2)(a) of Act 235*. There shall be no order as to costs.

ISSUE

[14] The sole issue of law before this court is whether the accrued amount of jackpot prize is to be included in variable B of the formula prescribed under para 8(1) of the Third Schedule of the GST Act 2014 in determining the value of betting and gaming supplies for GST purposes.

THE APPELLANT'S SUBMISSION

[15] The appellant argued that based on a true construction of the wordings employed in para 8(1) of the Third Schedule of the GST Act 2014, the appellant is entitled to include the accrued amount of jackpot prize in variable B of the formula, as long as it has been allotted by the appellant. Likewise, the respondents' own interpretation of the phrase 'payable to any person participating successfully', in which Customs contended that it is restricted to prize money paid to the winners of a particular draw only. On that basis, Customs disallowed the appellant from including the accrued amount of jackpot prize in variable B of the GST formula. In doing so, Customs has failed to take cognisance of the correct position of law and has acted ultra vires by supplanting the law with its own definition.

[16] The appellant submits that the words 'payable to any person participating successfully' are not define in the GST Act. Therefore, the words should be given their ordinary meaning. The appellant quoted the Oxford English Dictionary to define the word 'payable' as 'that must be paid' or 'able to be paid'.

[17] The appellant also quoted *Revenue Words and Phrases Judicially Considered* to define 'payable' as 'The words 'are payable' would seem to cover an already assumed obligation to pay a pension even if such pension was not at that date being paid'. Whereas, the *Cambridge Advanced Learner's Dictionary* defines the word 'payable' as 'that should be paid'. To support the appellant's contentions, the appellant cited the case of *Office Park Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2011] 9 MLJ 479 (HC), which held the word 'payable' means an obligation to pay at a future time. Based on the definitions above, it is the appellant's submission that the word 'payable' incorporates an element of futurity.

[18] The appellant further submitted that 'any person participating successfully' means anyone who takes part in a successful way or manner. Therefore, the phrase is not restricted to any specific winner at the time of a particular draw, neither has it required winner to be identified.

[19] It is also the appellant's submission that the word 'participating

successfully', not 'participated successfully' indicated that, it is not restricted to a category of persons who are already successful in the participation. The appellant averred that if the Parliament had intended to restrict it to only identified winner, the Parliament would have drafted the tenses as such.

[20] The appellant quoted the Federal Court case of *Arulpragasan a/l Sandaraju v Public Prosecutor* [1997] 1 MLJ 1 (FC), held that a deliberate change of expression denotes a change in meaning. The appellant submitted that the amount of money 'payable to any person participating successfully' includes the accrued jackpot prize that will be paid to anyone taking part successfully whether now or in the future and not just those who are already identified as winners.

[21] More interestingly, the appellant argued that even the national language version of the GST Act 2014 which provided that '*yang kena dibayar* kepada mana-mana orang yang terlibat yang berjaya' does not expressly require a winner to be identified.

[22] The appellant further argued that even where there is no winner identified, the accrued jackpot prize represents a definite and unavoidable cost to the appellant from the moment the draw closes and the amount of jackpot prize is accrued and set aside. Similar argument was raised before the Customs Appeal Tribunal where the appellant relied on a document entitled *Number Forecast Operators ('NFOs') Submission of a Request for Confirmation of GST Treatment* by PwC, which is exhibited as LKC5 before the court, to support its position that jackpot prize which is variable B is payable to winners regardless of when the successful participant is identified. The relevant passage in the document prepared by PwC for the appellant is as follows:

> Confirmation of our interpretation
>
> 3.19 The NFOs wish to confirm the value of 'B' for the purposes of determining the value of betting and gaming supplies under Paragraph 8, Third Schedule of the GST Act 2014 includes allotted monies to the JP1 and JP2 prize groups and which are payable to winners ('successful participants') of the game, regardless of when the successful participant is identified.

[23] It is the appellant stance that even if there is doubt in the interpretation itself (which is denied), the appellant submits that the Malaysian jurisprudence on this matter is clear. The Court of Appeal in *Exxon Chemical (M) Sdn Bhd v Ketua Pengarah Dalam Negeri* [2006] 1 MLJ 428; [2005] 4 CLJ 810 (CA), held that the maxim in revenue law is this; no clear provision; no tax. If there is any doubt then it must be resolved in the taxpayer's favour.

[24] The appellant further submitted that when there is no such

requirement imposed under para 8(1) of the Third Schedule of the GST Act, it is not open to Customs to dictate such condition or dictate terms as to how the appellant is to conduct its business. By imposing an additional condition that the appellant is required to identify a winner in order to include the accrued jackpot prize in variable B, Customs is essentially usurping the role of Parliament and rewriting statute.

THE RESPONDENTS' SUBMISSION

[25] The respondents submitted that variable B in para 8(1) of the Third Schedule of the GST Act 2014 must be read in full, ie 'B is *the amount of money, if any, payable to any person participating successfully* in the bettings, sweepstakes, lotteries, gaming machines or games of change; and ...'.

[26] The respondents emphasised on the words 'amount of money, if any' to denote that a possibly in existence situation, ie, it might happen and it might not happen. The respondents submitted that it is clear and unambiguous that variable B is the amount that is payable to the winner participating successfully in the jackpot. If there is no winner, the applicant cannot use the allotted amount for the jackpot as variable B.

[27] The first respondent also provided its Guide on Gaming (GST Treatment on Gaming) published on 12 August 2016 and demonstrated computation of GST on gaming supplies. Guide on Gaming (GST Treatment on Gaming) is intended to provide a general understanding of the relevant treatment under GST and aims to provide a better general understanding of taxpayers' tax obligations. Several examples were shown in the Guide on Gaming as regards computation of GST on gaming supplies particularly at paras 11, 12 and 13 that explained as follows:

> Computation of GST on Gaming Supplies
>
> 11. A GST-registered gaming operator is required to charge account for GST at 6/106 (tax fraction) *on the total gross takings received less cash pay-outs to winners*. However, if the pay-outs are not in cash but in the form of goods or services, GST has to be accounted at 6/106 on the total gross takings received. In both cases, the gross takings are considered to be inclusive of GST based on total considerations received for the gaming supplies.
>
> 12. The gaming operator has also to deduct other tax elements such as gaming tax, pool betting duty, betting and sweepstakes duty, and state sales tax from the total gross takings before calculating GST on any gaming supply.
>
> *3. In determining the value of supply involving a gaming machine, the balance of coins and tokens remaining in the machine when collection is removed from the machine is the taxable net takings, and GST is calculated by applying the tax fraction (6/106) to this amount after deducting the gaming tax.*

Example 5

A number forecast operator receives a total bets of RM500,000.00 for a draw. *Total cash pay-outs to successful winner is RM200,000.00.*

Bets received	RM500,000.00
Less	
Gaming tax @8%	RM 40,000.00
Pool betting duty @ 8% (net of gaming tax)	RM 36,800.00
Cash pay-outs	RM200,000.00
Net takings	RM223,200.00
GST (6/106 x RM223,200)	RM 12,633.96

[28] The above guide demonstrated that only jackpot prize that had actually been paid to the winner, ie cash pay-outs that could be included as variable B for calculation of GST purposes.

[29] As regards to the interpretation of para 8(1) of the GST Act, especially the meaning of 'akan dibayar' and 'kena dibayar', the respondents referred to Kamus Dewan Edisi Ketiga which provides the meaning of 'akan' and 'kena' as follows:

'Akan'

2. *Untuk menyatakan sesuatu kemungkinan (hendak terjadi sesuatu), untuk menyatakan kemungkinan (hendak terjadi sesuatu), untuk menyatakan jangkaan tentang sesuatu (kejadian, perlakuan, perkembangan, dan lalin-lain), dijangkakan*: ...

'Kena'

5. Tidak bebas (terlepas, terkecuali) daripada, dibebankan (diwajibkan) mematuhi peraturan (menanggung bayaran dan lain-lain): semua jenis minuman keras~cukai baru itu; ...

7. terpaksa (membuat dan lain-lain sesuatu): ... ~ekor mendapat wang sebagai hasil daripada cabutan nombor-nombor akhiran loteri (berasaskan keputusan lumba kuda); ... ~loteri mendapat hadiah kerana nombor tiket yg beli sama dengan nombor cabutan loteri;'

[30] The respondents further submitted that the accrued jackpot prize could only be considered as variable B if it had already been paid to the winner as draftsmen clearly use the words 'kena dibayar' instead of 'akan dibayar' in the GST Act 2014.

FINDINGS OF THIS COURT

[31] The primary issue that to be determined by this court is whether the accrued amount of jackpot prize is to be calculated in variable B of the formula

prescribed under para 8(1) of the Third Schedule of the GST Act in determining the value of betting and gaming supplies. In short, the disputes concern the interpretation and application of the special formula for betting and gaming prescribed by para 8(1) of the Third Schedule of the GST Act.

The law

[32] The relevant provision which relates to para 8(1) of the Third Schedule of the GST Act is s 15 of the GST Act. Section 15 provides the value of supply of goods or services and states:

> Section 15. Value of supply of goods or services
>
> (1) *Subject to the Third Schedule, the value of any supply of goods or services shall be determined in accordance with this section.*
>
> (2) Where the supply is for a consideration in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the consideration.
>
> (3) Where the supply is for a consideration not in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that consideration.
>
> (4) Where the supply is for a consideration not wholly in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the aggregate of —
>
> (a) to the extent that the supply is for a consideration in money, the amount of the money; and
>
> (b) to the extent that the supply is not for a consideration in money, the open market value of that consideration.
>
> (5) Where the supply is not for a consideration, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that supply.
>
> (6) Where the supply is not the only matter to which a consideration in money relates, the supply shall be deemed to be for the part of the consideration as is properly attributable to the supply.
>
> (7) For the purposes of this section, the value of the supply shall include excise duty paid or is to be paid where applicable.
>
> (8) The Minister may, by order published in the Gazette, amend the Third Schedule and provide for the determination of the value of a supply otherwise than in accordance with this section.
>
> (9) Any order made under subsection (8) shall be laid before the Dewan Rakyat.

[33] Pursuant to s 15(1) of the GST Act 2014, as far as betting and gaming industry is concerned, para 8 of the Third Schedule of the GST Act 2014 had

a specific provision in determining the value of betting and gaming supplies. The formula plainly states that variable A is the gross amount collected less any gaming tax and variable B is the amount payable to any person participating successfully in the jackpot games. The net amount ie (A-B) is subject to GST. Paragraph 8(1) of the Third Schedule, which reads:

> Value of betting and gaming supplies
>
> 8.(1) Where a taxable supply of services is made by a person licensed under any written law involving bettings, sweepstakes, lotteries, gaming machines or games of chance, the value of supply shall be determined in accordance with the following formula:
>
> $$\frac{100}{100 + C} \text{ X } (A\text{-}B)$$
>
> Where A — is the total amount received for the supply less any tax or duty under any other written law except excise duty;
> B — is the amount of money, if any, payable to any person participating successfully in the bettings, sweepstakes, lotteries, gaming machines or games of change; and
> C — is the rate of tax fixed under section 10.
>
> (2) Where the value of supply determined under paragraph (1) is negative, such value shall be treated as nil. (Emphasis added.)

[34] Paragraph 8(1) of the Third Schedule prescribes a specific formula to determine the value of betting and gaming supplies. The formula sets out the calculation of supply to determine the 6% GST payable to the first respondent known as Output Tax. The appellant is allowed to claim for any refund on costs incurred in the furtherance of its business which is known as Input Tax Credit. Section 2 of the GST Act provides the definition of Output and Input Tax as follows:

> 'tax' means goods and services tax; 'input tax' means —
>
> (a) tax on any supply of goods or services to a taxable person; and
>
> (b) tax paid or to be paid by a taxable person on any importation of goods, and the goods or services are used or are to be used for the purposes of any business carried on or to be carried on by the taxable person:
>
> Provided that where the goods or services are used or are to be used partly for the purposes of any business carried on or to be carried on by the taxable person and partly for other purposes, tax on the supply and importation shall be apportioned so that only so much as is attributable to the purposes of his business is counted as his input tax; 'output tax' means tax on any taxable supply of goods or services made by a taxable person in the course or furtherance of his business in Malaysia;

[35] This court also refers to reg 13(a) of the Goods and Services Regulations 2014 (GST Regulations 2014) which states that for gaming and betting

industry, the time of supply shall be at the time when the numbers are drawn:

> 13 Betting and gaming supplies
>
> *Where a taxable supply of service is made by a person licensed under any written law involving betting, sweepstakes, lotteries, gaming machines or games of chance, a supply shall be treated as taking place at the following time:*
>
> (a) where there is supply of services involving number forecasting, lottery and a game of chance, *the time supply shall be at the time when the numbers are drawn*.

[36] The approach of interpretation of a taxing statute is well-settled in the case of *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97(FC) where the Federal Court adopted the approach of interpretation of a taxing statute by Privy Council set out in *Mangin v Inland Revenue Commissioner* [1971] AC 739 which held as follows:

> [78] The correct approach to be adopted by a court when interpreting a taxing statute is that set out in the advice of the Privy Council delivered by Lord Donovan in *Mangin v Inland Revenue Commissioner* [1971] AC 739:
>
> First, the words are to be given their *ordinary meaning*. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. As Turner J said in his (albeit dissenting) judgment in *Marx v Inland Revenue Commissioner* [1970] NZLR 182 at 208, moral precepts are not applicable to the interpretation of revenue statutes.
>
> Secondly, '... one has to look merely at what is clearly said. *There is no room for any intendment. There is no equity about a tax. There is no presumption so to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used*' (Per Rowlatt J in *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 at 71, approved by Viscount Simons LC in *Canadian Eagle Oil Co Ltd v Regeim* [1945] 2 All ER 499; [1946] AC 119).
>
> Thirdly, *the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.*
>
> Fourthly, the *history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.*
>
> [79] In my respectful view, s 17A of the Interpretation Acts 1948 and 1967 neatly fits into and is complementary with the third principle in the judgment of Lord Donovan. Hence, the governing principle is this. *When construing a taxing or other statute, the sole function of the court is to discover the true intention of Parliament*. In that process, the court is under a duty to adopt an approach that produces neither injustice nor absurdity. (Emphasis added.)

[37] Coming back to para 8(1) of the Third Schedule, the ordinary meaning of the formula requires the appellant to use the total amount that had actually been collected by the appellant (variable A) minus the total amount of pay-out that had actually been paid to the winners which is considered as GST Input Tax (variable B). As a result, the formula provides GST shall only be collected on the net amount. If the net amount is zero, no tax shall be incurred. That is the ordinary meaning of it, no doubt, no confusion and no absurdity.

[38] Section 6(b) of Akta Bahasa Kebangsaaan 1963/1967 (Akta 32) allows this court to refer the phrase in para 8(1) of the GST Act in Bahasa Kebangsaan which states:

> 8(i) B ialah *amaun, jika ada, yang kena dibayar kepada mana-mana orang yang terlibat yang berjaya dalam pertaruhan*, ambil tagan, loteri, mesin perjudian atau permainan mengadu nasib; dan ...

The word 'amaun, jika ada, yang kena dibayar kepada mana-mana orang yang terlibat yang berjaya dalam pertaruhan' ('amount of money, if any, payable to any person participating successfully') obviously refer to winning number on drawn date and paid-out to the successful winner who has the right to claim the prize and who has been identified. Simply it means, a winner must be identified ('yang berjaya dalam pertaruhan') before prize money can be included in variable B. This court is of the view that the second respondent was not erred in its finding when it states that the phrase 'amount of money, if any, payable to any person participating successfully' means prize money due to any jackpot winner of the draw.

[39] The appellant argued that the accrued jackpot prize allocation should be included in variable B on the basis that accrued prizes are regarded as amounts payable to any person participating successfully. So, the appellants invariably include accrued jackpot prizes in variable B for each draw until a winner is identified. Where no winner is identified in a particular draw, the allotted monies are rolled over to the subsequent draws, until a winner is finally identified. The respondents maintain that variable B is only when actual winning is paid out and not on accrued basis. The Act explicitly provided for the computation of GST amount on each and every supply made by the appellant. It does not permit the computation of the GST on the cumulative supply. Therefore, the appellant has to adhere to such provision as stated.

[40] Regulation 13(a) of the GST Regulation Act 2016 also clearly states that supply of services involving number forecasting, time of supply shall be at the time when the numbers are drawn. The second respondent in its finding states that the time supply for jackpot games will arise when a jackpot is struck and the successful participant is identified. This means that the value of supply,

and (A-B) formula is only to be computed when a jackpot and a successful participant is identified. Thus, the value of variable A would be the total value of all stakes for all draws conducted up until the successful participant was identified. Likewise, the value of variable B would be all prizes paid out to the successful participant when the winner is identified and these prizes are not regarded as payable until a winner is identified. The phrase does not contain a futurity element to include foreseeable type of person like jackpot winner. The Act does not say anything about the future winning.

[41] It is the appellant's contentions that in variable B, the word 'any person participating successfully' means *anyone who takes part in a successful way* or manner and that it is not restricted to any specific winner at the time of a particular draw, neither has it required winner to be identified. This court is disagree with the appellant's contention and is of the view that 'anyone who takes part in a successful way' only refers to persons participating in the game and may not be necessarily a winner at the time of a particular draw. Variable B of para 8(1) specifically refers to the amount of money, if any, payable to any person participating successfully in the jackpot game. It refers not only to the successful participants in the jackpot game (the winner) in the said particular draw but also the amount of money that is to be paid to the successful winner. Therefore, this court finds no reason to depart from the finding of the second respondent that 'any person participating successfully' ordinarily means any person who is declared as the winner of the jackpot.

[42] All in all, the appellant maintained its submission that words in variable B to be given their ordinary meaning. However, the approach taken by the appellant in breaking the wording of variable B into parts and pieces has resulted an attempt to ascertain the will of GST Act 2014 will lead to absurdity. It is pertinent to note that the reason for the enactment of the GST Act 2014 is for a more efficient broad-based consumption tax based on value-added concept. GST covers all sectors of the industry and is a tax on final consumption of goods and services. It is collected through a credit system where GST incurred on inputs is offset against GST charged on outputs. For number forecast operator like the appellant, it is clear to this court that the GST charged on selling the lottery ticket is the GST output tax.

[43] In addition, as far as GST Act 2014 is concerned, there is no evidence before the respondents to show that betting and gaming industry is a selected economy to be stimulated by the government for this industry to receive a more favourable GST treatment that a number forecast operator is allowed to collect GST output tax by selling lottery tickets for an accrued jackpot, at the same time is still entitled to enjoy rebate under the GST input tax even though there is no actual pay-out yet.

[44] Looking fairly at the language used and the findings made by the second respondent, this court is of the view that if the accrued jackpot is struck by a winner and the said jackpot prize has actually been given out to the winner, then it is when the GST input tax incurred and only then it could be included as variable B for the determination of value of betting and game supplies under para 8(1) of the Third Schedule of the GST Act 2014.

[45] The wording provided in variable B in para 8(1) of the Third Schedule of the GST Act 2014 must be read conjunctively. Therefore, the ordinary meaning of the GST Act 2014 must mean the jackpot prize that had actually been paid to the winner for it to be included as variable B for the calculation of value of betting and gaming supplies for GST purposes. This is the reason why the formula is formulated in such a way for GST which is a broad-based consumption tax based on a value-added concept and based on final consumption of goods and services. Hence, this court finds that the appellant had misconstrued the ordinary meaning of para 8(1) of the Third Schedule of the GST Act 2014 when submitted that even where there is no winner identified, for the accrued jackpot prize represents a definite and unavoidable cost to the appellant from the moment the draw closes, the appellant could include it as variable B. In the absence of any other interpretation of variable B except what is stated in paragraph 8(1) of the Third Schedule GST Act, it is unbecoming for the appellant to suggest something that is beyond the scope of the Act.

CONCLUSION

[46] It is a settled principle that the appellate courts are slow in interfering with the case of the findings of tribunals specialising in specific fields. Tribunals possess the ability to appreciate facts and appropriate weightage to be attached to the evidence given by the parties in the fields where the relevant tribunals specialise in. The Court of Appeal in *Ketua Pengarah Hasil Dalam Negeri v Teraju Sinar Sdn Bhd* [2014] 4 MLJ 218 (CA) held that:

> [17] Appellate courts are particularly slow in the case of the findings of tribunals specialising in specific fields. This is for the reason that, like the SCIT in this case, such tribunals develop the ability to give facts and evidence their appropriate weightages and significance specific to the particular field the tribunal specialises in. Hence, *interpretation and application of accounting rules and practices in taxation are unlikely to be disturbed except in the case of manifest error in respect of the above*. It is necessary therefore to first examine the alleged error and determine if the finding is within such specialisation. (Emphasis added.)

[47] It is the court's view that in a specific field like GST, it is an undoubtedly a specialised area of tax that requires special skill to comprehend its operating mechanism in detailed. It is always better for the Customs Appeal Tribunal

which consist of three members who possess the requisite expertise to adjudicate tax matter. Nevertheless, it does not bar this court from exercising its appellate power to interfere with the second respondent's decision if it shows that the second respondent has committed a manifest error in its decision.

[48] After having considered the appellant's appeal and submissions by parties, this court finds that there is no merit in the appellant's appeal. There is no evidence before this court to show that there has been any manifest error in law and/or in fact in the second respondent's decision in relation to the interpretation and application of para 8(1) Third Schedule of the GST Act in determining the value of betting and gaming supplies for goods and services tax purposes.

[49] For the reasons already given, this court finds that there is no appealable error in the second respondent's decision that warrants an intervention by this court. The appellant's application (appeal under s 141W of the Customs Act 1967) is therefore dismissed with costs of RM5,000 subject to allocatur fee. The decision of the second respondent dated 24 June 2019 in affirming the first respondent's decision dated 21 June 2017 is hereby affirmed.

Application dismissed with costs.

Reported by K Selvaraju